



POLICE DEPARTMENT

September 2, 2014

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Kevin Harford
Tax Registry No. 915864
20 Precinct Detective Squad
Disciplinary Case No. 2013-9778

The above-named member of the Department appeared before me on March 12, 2014, charged with the following:

1. Said Lieutenant Kevin Harford, assigned to the Internal Affairs Bureau and Detective Borough Manhattan, on or about March 7, 2012 and March 21, 2013, wrongfully impeded a Department investigation by making false and/or misleading statements to Department investigators when questioned about the facts and circumstances surrounding whether he was asked for information regarding a confidential Department investigation.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

The Department was represented by Vivian Joo, Esq., Department Advocate's Office.
Respondent was represented by Philip Karasyk, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTEDIntroduction

The genesis of this charge is the Internal Affairs Bureau's (IAB) investigation into Patrolmen's Benevolent Association (PBA) trustees who were involved in preventing processing and adjudication of summonses. During this investigation, a wiretap order was obtained to monitor the telephone conversations of the Bronx PBA trustee Police Officer Joseph Anthony. On October 27, 2010, IAB investigators monitored telephone conversations between Anthony and Police Officer Christopher Rykert, the PBA's Brooklyn North trustee, and they also monitored a conversation between Anthony and Police Officer Michael Hernandez, a member of the PBA's executive board, who was seeking to learn why he had been ordered to appear at IAB to be interviewed. During some of these conversations Respondent's name was mentioned.

Respondent was assigned to IAB in May 2010 and during October 2010 Respondent was assigned to IAB Group 21. Respondent knew Anthony because he had been Respondent's union delegate when Respondent was assigned to the 75 Precinct. Respondent was friendly with Rykert whom he had also worked with when he was assigned to the 75 Precinct.

An official Department interview of Respondent was conducted on March 7, 2012. A second official Department interview of Respondent was conducted on March 21, 2013. The answers Respondent offered in response to the questions posed to him at these two interviews are the subject of this charge.

The Department's Case

The Department called Detective Kai Mendez, Renada Lewis, Police Officer Christopher Rykert and Lieutenant Kurt Weber as witnesses.

Detective Kai Mendez

Mendez, a 16-year member of the Department who is currently assigned to IAB, recalled that during 2010 she was assigned to monitor wiretapped telephone conversations of PBA trustees including Anthony. On October 27, 2010, four calls between Anthony and Rykert were recorded. [Department's Exhibit (DX) 2 is transcriptions of the four Anthony/Rykert calls.]

This series of calls began with Anthony calling Rykert at 12:23 p.m. Anthony asked Rykert to call "Kevin Hartford" because "Mike Hernandez (is) being ordered in right now to IAB...various phone calls have been made and it's not about the summonses. So I don't know what it's about. But if you could reach out to Hartford or somebody that knows him better...and find out...if Hartford knows why it's goin' on."

At 12:29 p.m., Rykert called Anthony back and stated that "I just spoke to him, he doesn't, it's not his group but he's gonna...go inquire and call me right back so soon as I hear I'll call you back...he's going to go track, find out what's up."

At 12:35 p.m., Rykert called Anthony and left a voicemail on his answering machine that "It's got nothing to do with the summonses but they won't tell him what it has to do with... Kevin said the guys he trust don't know."

At 12:36 p.m., Anthony called Rykert back. Rykert told Anthony, "The guys Kevin trusts don't know anything about it. The guys he don't trust, he tried to like inquire, but the other side of the building. It's not on his side and they won't tell him what's up cause they know he

hasn't been there that long obviously. He goes 'I only trust two guys on the other side and neither one of them are here and nobody else will speak to me.' It's not like they speak to each other."

At 12:26 p.m. that same day, Mendez recorded a telephone conversation between Anthony and Hernandez. [DX 3 is the transcript of this conversation.] During this call, Anthony told Hernandez that the "lieutenant IAB" who was in "bagpipers" is "trying to fucking find out that he knows that it's nothing about summonses."

On cross-examination, Mendez confirmed that because she had never met Rykert or Anthony she was unable to identify their voices when she started monitoring their phone conversations in January 2010. She initially identified the call participants by using a list that she had been given that attached names to phone numbers. The case investigator, Detective Randy Katakofsky, identified the voices of the call participants and told her their names. Mendez confirmed that Katakofsky was subsequently thrown out of the wire room and served with charges in connection with the investigation. The only calls that Mendez personally heard and transcribed were the 12:26 p.m. call between Anthony and Hernandez and the 12:29 p.m. call between Anthony and Rykert.

Renada Lewis

Lewis has been employed by Verizon Wireless for twelve years. As a custodian of records, she is responsible for authenticating cell phone records. At IAB's request, Lewis obtained Verizon Wireless' billing record for Police Officer Christopher Rykert's cell phone (DX) 1. Lewis explained that this billing record shows two calls between Rykert's cell phone and cell phone number [REDACTED] on October 27, 2010. An outgoing call from Rykert's cell

phone to cell phone number [REDACTED] was placed at 12:30 p.m., and an incoming call from cell phone number [REDACTED] to Rykert's cell phone was placed six minutes later.

On questioning by Respondent's attorney, Lewis confirmed that although Rykert's cell phone bill indicates that both the calls lasted three minutes, this call duration time was not a precise time because for billing purposes Verizon rounds the time of the call up to the next highest minute. Lewis explained that as a result of this rounding up policy, a call that lasted two minutes and two seconds would appear on Rykert's Verizon bill as having last three minutes. Lewis agreed that just by looking at the bill there was no way to know who actually participated in the calls.

Police Officer Christopher Rykert

Rykert, a 22-year member of the Department who is currently assigned to the 75 Precinct and who has served as the PBA's Brooklyn North trustee since 2007, confirmed that he and Respondent have a friendly relationship. Rykert is also friends with Anthony and has known him for over 20 years. Rykert identified his own voice and the voices of Anthony and Hernandez on the recordings in evidence (DX 2 and 3).

Regarding his October 27, 2010 conversations with Anthony, he explained that Anthony had called him to find out why Hernandez was being ordered to IAB. After the first call with Anthony, Rykert called Respondent to ask about the matter. Respondent, who had recently been transferred to IAB, told Rykert that he had nothing to do with Hernandez's case and did not know why Hernandez was being ordered to IAB. Respondent later called Rykert back and told him that "it wasn't his group [that was handling Hernandez' case], he didn't know anybody that

could find out, and [he] had no real information.” Rykert subsequently called Anthony to inform him that Respondent did not know the reason for Hernandez being ordered to IAB.

On cross-examination, Rykert confirmed that it was nothing out of the ordinary for him to call Respondent. He only asked Respondent if he knew why Hernandez was being ordered to IAB. He did not mention anything to Respondent about ticket-fixing or driving while intoxicated (DWI). The call lasted less than three minutes. Six minutes later, Respondent called him back to say that he knew nothing about Hernandez’s case. This second phone call was also a short one. Three years later, Rykert was asked about the phone calls in an official Department interview. He had no recollection of the calls until investigators played him the recordings of his conversation with Anthony to refresh his memory.

Lieutenant Kurt Weber

Weber, a 16-year member of the Department who is assigned to IAB, was assigned to investigate an allegation that Respondent had disclosed confidential information. The allegation stemmed from the recorded phone call during which Anthony asked Rykert to contact Respondent about why Hernandez had been notified to appear for an IAB interview.

Weber was present at two tape-recorded official Department interviews of Respondent. At the first interview, held on March 7, 2012, investigators asked Respondent if anyone had contacted him about Hernandez’s case. Respondent’s response was, “No.” (DX 4 is the interview transcript.)

Because Respondent was assigned to the Military and Extended Leave Desk (MELD), his second official Department interview was not held until March 21, 2013. During this interview, Respondent confirmed that his cell phone number was the same number that appeared on

Rykert's phone bill on October 27, 2010, but he stated that he did not recall having a conversation with Rykert about Hernandez's case. (DX 5 is the interview transcript.)

On cross-examination, Weber agreed that it was very likely that investigators never played the recordings of the Anthony/Rykert calls for Respondent. The first interview of Respondent was held approximately 16 months after the phone calls took place. Investigators did not mention Rykert's name during that interview. Instead they asked Respondent about a member of the service named Christopher Scott. Weber confirmed that investigators uncovered no evidence of any direct contact between Hernandez and Respondent and no evidence that Rykert specifically told Respondent that Hernandez's case concerned DWI. Thus, Weber agreed that investigators possessed no evidence that contradicted Respondent's negative response when he was asked in the interview, "Are you aware there was an investigation into Police Officer Hernandez for DWI?" Weber also agreed that Respondent gave truthful answers when he answered "no" to the following questions: "Did you ever inquire with anyone in Bronx IAB about the wire investigation?" "Did you ever inquire with anyone in Bronx IAB about the investigation into Officer Hernandez's DWI?" Weber did not know that at the time of the first interview Respondent was awaiting imminent deployment to Saudi Arabia as a member of the United States Air Force.

It was at the second official Department interview that investigators first mentioned Rykert's name to Respondent. There was no evidence that contradicted Respondent's negative response when he was asked if had known at the time the first interview was held about Hernandez's DWI investigation. Weber agreed that investigators had no evidence which corroborated Rykert's statements that Respondent had tried to get information about

Hernandez's case. Weber never asked anyone at IAB whether Respondent had approached them for information.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent, a 19-year member of the Department who is currently assigned to the 20 Precinct Detective Squad, was promoted to sergeant in August 2001. While he was serving as a military reservist in October 2001, he was called to active duty for a period of 19 months.

Several years later, after being promoted to lieutenant, he was called to active duty for a second time and served in Iraq. While in Iraq, he was fired upon and later received an Air Force commendation medal. Upon his return, the Department sent him to the FBI National Academy for three months. In March 2012, he was deployed to Saudi Arabia for seven months.

Respondent has never before been the subject of Department charges. He has been awarded several medals for Excellent Police Duty and Meritorious Police Duty. He also received a Commendation for, while off duty, identifying and tracking a perpetrator who was wanted for numerous armed residential robberies.

At the time of his March 7, 2012 official Department interview, his deployment to Saudi Arabia was imminent. He described his frame of mind during that period, "There's a lot on your mind. I'm going overseas not knowing where. I'm leaving my house, my family, my girlfriend. And at this point in my [military] career I'm a ranking individual responsible for 70 troops that haven't ever deployed; so I was not only responsible for myself, I was responsible for these

young troops that are going to go into harm's way. So I have a lot on my mind." At no point during the first interview did the investigators ever mention Rykert. Nor did they allow him to listen to the recorded conversations between Rykert and Anthony. While he was assigned to IAB, it was Respondent's practice to never entertain requests for information about cases. He did not take any steps to find out information about Hernandez's case. In fact, Respondent did not even recognize Hernandez's name. Respondent had a friendly relationship with Rykert, but he did not recall receiving a call from Rykert on October 27, 2010.

The March 21, 2013 interview, held after Respondent returned from his military deployment, was the first time that investigators asked him about having a conversation with Rykert. About the October 2010 conversation with Rykert, Respondent testified, "I do not have any recollection of that conversation that they say happened, but . . . after receiving the charges and seeing all the discovery, it's a possibility that it did happen. But the first time I got questioned about it, the second time I got questioned about it, and today I can honestly say I don't remember having that conversation, if it ever happened." Whether or not the conversation with Rykert occurred, there was no way that he would have actually made an inquiry about Hernandez's case.

On cross-examination, Respondent confirmed that IAB Groups 21 and 22 were responsible for Bronx investigations, that they shared offices in the same building and that he and Rykert had a friendly relationship but that they did not socialize outside of work. Respondent knew that IAB investigations were confidential and no one ever asked him for confidential information while he worked there. Respondent is a bagpiper in the Emerald Society's pipe and drum band.

FINDINGS AND ANALYSISIntroduction

Respondent is not charged here with having disclosed information regarding an IAB investigation nor is he charged with having agreed to try to improperly access confidential information or having attempted to improperly access confidential information. Rather, it is charged that at two official Department interviews he “wrongfully impeded a Department investigation by making false and/or misleading statements to Department investigators when questioned about the facts and circumstances surrounding whether he was asked for information regarding a confidential Department investigation.”

The charge refers in the singular to “a confidential Department investigation” and at this trial the Advocate asserted that the confidential IAB investigation that Rykert, at Anthony’s request, had asked Respondent to find out about was why Hernandez was being ordered to appear at IAB.

The March 7, 2012 official Department interview (DX 4)The Department Advocate’s Bill of Particulars

In a letter dated March 4, 2014 (which elaborated on the Department’s Bill of Particulars), the Advocate listed the page numbers and the line numbers in the transcript of the interview which contain Respondent’s answers that the Department Advocate contends were false and/or misleading answers. Although the letter lists all of Respondent’s answers on page 8 of the transcript and all of Respondent’s answers on page 9, lines 1 through 14 of the transcript as being false and/or misleading answers, five of the questions posed to Respondent on these two pages concerned whether anyone had ever asked him to find out information about “the wire

investigation” into PBA delegates who were fixing summonses, not why Hernandez was being ordered to appear at IAB. Thus, I find that the Advocate’s letter cites to five questions and answers which are outside the scope of this charge.

The manner in which this official Department interview was conducted

Patrol Guide Procedure 206-13 “Interrogation of Members of the Service,” governs the manner in which official Department interviews of members of the service are to be conducted. Under this Patrol Guide Procedure, Respondent’s interviewers were required to “inform” him about “information concerning all allegations.”¹ This language implicitly implies that Respondent’s interviewers were under a duty to provide him with accurate information.²

The information that Respondent’s interviewers possessed at the time of this interview included all of the evidence offered by the Advocate at this trial: the recordings of the October 27, 2010 telephone conversations between Anthony and Rykert (DX 2); the recording of the telephone conversation between Anthony and Hernandez on October 27, 2010 (DX 3); and the Verizon billing record for Rykert’s cell phone which shows two calls between Rykert’s cell phone and Respondent’s cell phone on October 27, 2010.

Thus, Respondent’s interviewers knew, or should have known, from listening to these recordings that Anthony had asked Rykert to reach out to Respondent to see if he could find out why Hernandez had been called down to IAB (DX 2). However, at this official Department interview Respondent was asked, “There’s a wire transcript between Joe Anthony and Chris

¹ Patrol Guide Procedure No. 206-13(2) (g).

² See Case No. 2010-3157 (Nov. 14, 2013) where a police officer was found not guilty of a charge that she had made misleading statements during an Official Department Interview because her interrogators failed to provide her with accurate information concerning the allegations that were the subject of the interview.

Scott and Chris Litizzia where they say to reach out to you...and find out information regarding Police Officer Hernandez. Hernandez was being called down to IAB to be modified or suspended for a DWI investigation...Did any of them ever reach out to you?" Even though the Department Advocate offered no evidence at this trial that Anthony or Scott or Litizzia ever personally reached out to Respondent, the Department Advocate's Bill of Particulars cites Respondent's "No" answer as being a false and/or misleading answer.

Also, Respondent's interviewers knew, or should have known, that it was Rykert who told Anthony that Respondent had told Rykert that he was unable to obtain any information about the Hernandez investigation because he was new and no one would tell him anything. However, at this interview Respondent was asked, "Do you have any idea why Officer Joe Anthony would say on a wire that you told *him* (emphasis added) that there was no information, because you're new and no one will tell you anything?" Despite the interviewer's inaccurate assertion that a wire recording reflected that Anthony had claimed that Respondent had personally told him that there was no information and that because he was new no one would tell him anything, the Advocate's letter cites Respondent's answer, "No, I don't remember that; that doesn't sound familiar at all," as being a false and/or misleading answer.

I find it highly significant that despite the fact that Respondent's interviewers possessed information that it was Rykert who had reached out to Respondent to see if he could obtain any information regarding why Hernandez had been called to IAB, and despite the Patrol Guide Procedure's mandate that Respondent be informed about information concerning the allegations against him, his interviewers never mentioned Rykert's name once during this entire interview.

Moreover, even though this interview was held 16 months after Respondent and Rykert had exchanged two phone calls that had lasted no more than two to three minutes each,

Respondent's interrogators never attempted to refresh his recollection by informing him that they had obtained Rykert's cell phone records which reflected these two calls, or by playing even one of the recordings of the October 27, 2010 telephone conversations and messages between Anthony and Rykert or the conversation between Anthony and Hernandez.

The Department Advocate argued that Respondent's answers at this official Department interview constituted false and/or misleading answers because Respondent should have been able to recall the substance of his two brief telephone calls with Rykert 16 months after they occurred without his interviewers having to refresh his recollection by mentioning Rykert's name. I cannot subscribe to the Department Advocate's position.

The March 21, 2013 official Department interview (DX 5)

The Department Advocate's Bill of Particulars

Although the Advocate's letter lists all of Respondent's answers on page 10 of the transcript and Respondent's answer to the question posed on page 11, lines 1 through 3 of the transcript as being false and/or misleading answers, two of the questions posed to Respondent on these pages concerned whether Rykert had ever asked him to elicit information regarding "the wire." As discussed above under the March 7, 2012 official Department interview, I find that the Advocate's letter cites to two questions and answers which are outside the scope of this charge.

Also, the Advocate's letter cites Respondent's "No" answer to the question "Now at any point did you have any conversations with Officer Anthony in regards to Officer Hernandez?" (DX 5 page 12, lines 8 through 10) as a false and/or misleading answer. Since the Advocate had no evidence that Respondent and Anthony had any conversations regarding Hernandez, charging that Respondent made a false and/or misleading answer to this question was improper.

The March 21, 2013 interview was held soon after Respondent returned from his military deployment overseas. It was at this interview, which was conducted a full year after the first interview and 29 months after the two brief phone calls between Respondent and Rykert took place, that Respondent's interrogators, for the first time, told him about the Anthony/Rykert telephone conversations on October 27, 2010. However, his interrogators never played any of the recordings of the Anthony-Rykert conversations or the Anthony-Hernandez conversation for Respondent. It was also at this March 21, 2013 interview that his interviewers, for the first time, informed him that they had cell phone records that showed that he and Rykert had exchanged brief cell phone calls on October 27, 2010.

Finally, it was at this interview that Respondent was informed by his interrogators for the first time that Rykert had stated at an official Department interview that he had told Rykert that, as an interviewer paraphrased it for Respondent, "you didn't know what was going on relative to Officer Hernandez, your group wasn't involved, you attempted to find out, but you didn't know anyone that could give you any of this information." Since it is undisputed that 29 months had passed since Respondent allegedly told Rykert this, I find that Respondent's answer that he had no present recollection of their conversations during the two brief phones calls that Rykert's cell phone records reflect he and Rykert exchanged on October 27, 2010, was not proved to be a false or a misleading answer.

I find that based on the manner in which Department interrogators conducted Respondent's first official Department interview, and based on the fact that Respondent's second official Department interview was conducted 29 months after the events that were the subject of this interview, the Department Advocate failed to sufficiently prove that at either of these interviews Respondent should have been able to recall the substance of two telephone calls with Rykert that lasted no more than three minutes each.

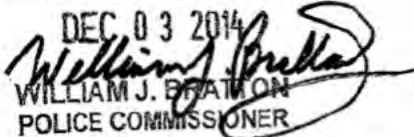
Therefore, Respondent is found Not Guilty.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner – Trials

APPROVED

DEC 03 2014

WILLIAM J. BRATTON
POLICE COMMISSIONER